ORIGINAL

OPEN MEETING

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MEMORANDUM

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AZ CORP COMMISSION
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TO: THE COMMISSION

FROM: Utilities Division

DATE: April 13, 2010

RE: IN THE MATTER OF THE APPLICATION OF VERDE SANTA FE WASTEWATER COMPANY FOR APPROVAL OF A REVISED TARIFF REDUCING THE COMMODITY RATE FOR EFFLUENT SALES (DOCKET NO. SW-03437A-09-0493)

Introduction

On October 14, 2009, Verde Santa Fe Wastewater Company ("VSFWC" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for a reduction in the commodity rate for effluent sales. On October 29, 2009, the Utilities Division ("Staff") requested a suspension of the time clock to evaluate this tariff filing. On December 8, 2009, the Commission issued Decision No. 71429 suspending the filing through March 10, 2010. At the March 3, 2010 Open Meeting to consider the proposed recommended opinion and order, the Commission elected to defer a decision on the Company's request. The Commission directed Staff and the Company to use the additional time to explore effluent disposal alternatives, in light of the existing effluent customer's unwillingness to pay the authorized tariff and the possibility that this customer may not be a continuing business entity in the future. This memorandum presents Staff recommendations resulting from further review of the matter.

Background

VSFWC is a subchapter C corporation located in Yavapai County, Arizona, in the vicinity of the Town of Cottonwood. Commission Decision No. 60779, dated April 8, 1998, granted the Company a Certificate of Convenience and Necessity ("CC&N") and also established the Company's current rates.

Consumer Services

Staff's review of the Commission's records for the period January 1, 2006, to November 9, 2009, found two complaints and no inquiries. In 2006 and 2008 there were no complaints, inquiries, or opinions expressed. In 2007, there was one complaint regarding rates. In 2009, there was one complaint regarding billing. All complaints have been resolved and closed.

Compliance

At the time of its filing, the Company was not in good standing with the Commission's Corporations Division. The Company had not filed its annual report when due on August 12, 2009. The Corporation was administratively dissolved for non-payment on January 20, 2010. On February 23, 2010, the Company filed its annual report with the Corporations Division and obtained a Certificate of Reinstatement.

The Original Tariff Filing

VSFWC's application requested permission to reduce its authorized tariff for the commodity rate for effluent sales from $2.00 per 1,000 gallons to $0.40 per 1,000 gallons.

Verde Santa Fe Golf Course ("Golf Course") is currently and has always been the Company's only effluent customer. The Company had been unsuccessful in collecting the $2.00 per 1,000 gallons tariff rate from its effluent customer. Because of this inability to collect the tariff rate, on or before 2006, the Company began billing its effluent at the rate of $0.23 per 1,000 gallons which was the price the Golf Course appeared to be willing to pay. In 2009, the Company began billing its effluent at $0.40 per 1,000 gallons following an indication from Golf Course that this rate was a reasonable charge for effluent. Despite those indications from Golf Course and the Company revising its billing rate to $0.40 per 1,000 gallons, records show that the Company has only been able to collect charges at the $0.23 per 1,000 gallon rate.

The Company's application asserted that Golf Course was interested in using effluent; however, the approved tariff rate makes use of effluent cost prohibitive. The Company claimed the approved effluent rate causes potential purchasers to look elsewhere. The Company's application stated that the purpose of the revised tariff was two-fold: (1) to promote groundwater conservation by making the use of effluent in new and existing developments a viable economic alternative; and (2) to maintain and enhance the public health, safety and welfare by enhancing its ability to dispose of treated effluent.

The Company's application stated that the requested tariff change is revenue neutral and a rate case is not required.

In its Staff Report dated February 17, 2010, Staff originally concluded that the proposed tariff revision was not revenue neutral and therefore, the proposed revision of the effluent tariff is more appropriately considered in the context of a rate case. The requested effluent rate ($0.40 per 1,000 gallons) is higher than the rate ($0.23 per 1,000 gallons) the Company has historically collected for the effluent, and the Company's application indicated that the revised rate would promote use of effluent in new as well as existing developments.

The Company filed exceptions to the February 17, 2010, Staff Report, stating among other things, that because of public safety and health concerns, it accepted payment for effluent at less than the authorized rate. During the March 10, 2010, Open Meeting, the Company indicated that the Golf Course could shut down at any time. The Company indicated that should the Golf Course shut down, it did not have a contingency plan for the disposal of effluent. The Commission, at the March 10, 2010, Open Meeting, pulled the item and directed Staff to meet with the Company to discuss effluent disposal alternatives.

Additional Staff Analysis

The Company has acknowledged selling effluent to Golf Course at less than the tariff rate. VSFWC's rationale for these sales is that Golf Course is the sole user of the effluent and the Company would likely to be left without a means to dispose of the effluent if Golf Course finds that pumping groundwater from its own wells is less costly than purchasing effluent.

In response to Staff data request GTT-3.1, the Company confirmed what it stated at Open Meeting, that it has no formal contingency plan for the disposal of effluent in the event that Golf Course refuses to take further deliveries of effluent. As a consequence, should Golf Course cease to accept future deliveries, the Company has neither other purchasers for the effluent nor the ability to either store or discharge effluent.

Staff notes that since the granting of its CC&N, the Company has failed to develop a workable alternative effluent disposal plan, even after Golf Course suggested that it may refuse future deliveries of effluent. Staff has found that VSFWC has accepted payment, since on or before 2006, for effluent sales at less than the approved tariff rate without informing the Commission that it had little leverage to enforce payment at the authorized rate. Staff is also concerned that the Company has knowingly billed for effluent sales at less than the approved tariff rate.

In discussions with Staff, VSFWC agreed that it is in the Company's best interest to formulate an alternative disposal plan for the system's effluent. VSFWC has indicated that it is reviewing a number of possible alternatives including: (1) discharge effluent through the use of vadose-zone wells, (2) purchase land for percolation/evaporation ponds, and (3) obtain additional effluent customers. At this time, the Company has not developed cost estimates or time estimates for implementation of any of these possible alternatives for effluent disposal. Until a contingency plan is developed and made operational, the Company proposes to continue to accept $0.23 per 1,000 gallons from Golf Course.

Conclusions and Recommendations

Staff concludes that the potential loss of Golf Course as an effluent customer, coupled with the Company's lack of an operational alternative effluent disposal plan, constitutes threat to the public's health and safety. Such circumstances require prompt Commission action to promote the public health and welfare. Accordingly, Staff recommends approval of a $0.23 per 1,000 gallons emergency rate for the disposal of effluent subject to the following conditions.

1. That VSFWC post a $100,000 bond. The purpose of the bond is to provide funds for alternate effluent disposal, if and when deemed necessary by the Commission, and it should remain a requirement until an alternative effluent disposal option is operational and approved by the Arizona Department of Environmental Quality ("ADEQ").

2. That the Company file, as a compliance item in this Docket, by December 31, 2010, documentation showing that ADEQ has approved an alternative effluent disposal plan. If documentation from ADEQ is not submitted by December 31, 2010, the above bond shall be increased to $200,000.

3. That the Company file a rate case no later than March 31, 2011, using a 2010 test year.

4. That VSFWC file, as a compliance item in this Docket, within 30 days of the end of every quarter beginning with the quarter ending June 30, 2010, a Report of Effluent Sales showing: the amount of effluent sold in gallons for the quarter; the rate and amount invoiced for the sales; and the amount collected for the sales. This report should include, as an attachment, copies of the customer bills rendered and source documentation showing the payment amounts collected from those bills.

5. That VSFWC implement a management plan establishing controls intended to prevent future oversights that could result in compromises to its operations and to the public health and safety. Specifically, the plan should address any potential oversights that may be similar in nature, substance or significance to those that that allowed: (1) the absence of a viable contingency plan for effluent disposal; (2) delaying for years to inform the Commission regarding its long-term inability to collect properly billed tariff rates from the Golf Course; and (3) knowingly billing for effluent sales at less than the approved tariff rate.

6. That VSFWC be placed on notice that it should take all reasonable efforts to ensure compliance with all Commission rules and authorized tariffs.

Steven M. Olea
Director
Utilities Division

SMO:GTM:lhm\RM

Originator: Gary T. McMurry

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

IN THE MATTER OF THE APPLICATION OF VERDE SANTA FE WASTEWATER COMPANY FOR APPROVAL OF A REVISED TARIFF REDUCING THE COMMODITY RATE FOR EFFLUENT SALES	DOCKET NO. SW-03437A-09-0493 DECISION NO. __________ ORDER

Open Meeting
April 27 and 28, 2010
Phoenix, Arizona

BY THE COMMISSION:

INTRODUCTION

Verde Santa Fe Wastewater Company ("VSFWC" or "Company") is a subchapter C corporation located in Yavapai County in the vicinity of Cottonwood, Arizona. On October 14, 2009, VSFWC filed with the Arizona Corporation Commission ("Commission") an application for a reduction in the commodity rate for effluent sales.

On October 29, 2009, Staff requested a suspension of the time clock to evaluate this tariff filing. On December 8, 2009, the Commission issued Decision No. 71429 suspending the filing through March 10, 2010. A Recommended Opinion and Order was considered at the March 3, 2010, Open Meeting. The Commission elected to defer a decision to allow Staff and the Company time to explore effluent disposal alternatives, in light of the existing effluent customer's unwillingness to pay the authorized tariff and the possibility that this customer may not be a continuing business entity in the future.

FINDINGS OF FACT

1. Commission Decision No. 60779, dated April 8, 1998, granted the Company a Certificate of Convenience and Necessity ("CC&N") and also established the Company's current rates.

2. Staff's review of the Commission's records for the period January 1, 2006, to November 9, 2009, found two complaints and no inquiries. In 2006 and 2008 there were no complaints, inquiries, or opinions expressed. In 2007, there was one complaint regarding rates. In 2009, there was one complaint regarding billing. All complaints have been resolved and closed.

3. At the time of its filing, the Company was not in good standing with the Commission's Corporations Division. The Company had not filed its annual report when due on August 12, 2009. The Corporation was administratively dissolved for non-payment on January 20, 2010. On February 23, 2010, the Company filed its annual report with the Corporations Division and obtained a Certificate of Reinstatement.

4. VSFWC's application requests permission to reduce its authorized tariff for the commodity rate for effluent sales from $2.00 per 1,000 gallons to $0.40 per 1,000 gallons.

5. Verde Santa Fe Golf Course ("Golf Course") is currently and has always been the Company's only effluent customer.

6. The Company had been unsuccessful collecting the $2.00 per 1,000 gallons tariff rate from Golf Course.

7. On or before 2006, the Company began billing its effluent at $0.23 per 1,000 gallons because it appeared that this was the price the Golf Course was willing to pay.

8. In 2009, the Company began billing its effluent at $0.40 per 1,000 gallons following an indication from Golf Course that this rate was a reasonable charge for effluent. Despite those indications from Golf Course and the Company revising its billing rate to $0.40 per 1,000 gallons, records show that the Company has only been able to collect charges at the $0.23 per 1,000 gallon rate.

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9. The Company's application asserts that Golf Course is interested in using effluent; however, the approved tariff rate makes use of effluent cost prohibitive. The Company further claims that the approved effluent rate causes potential purchasers to look elsewhere.

10. The Company's application states that the purpose of the revised tariff is two-fold: (1) to promote groundwater conservation by making the use of effluent in new and existing developments a viable economic alternative; and (2) to maintain and enhance the public health, safety and welfare by enhancing its ability to dispose of treated effluent.

11. The Company's application states that the requested tariff change is revenue neutral and a rate case is not required.

12. The requested effluent rate ($0.40 per 1,000 gallons) is higher than the rate ($0.23 per 1,000 gallons) the Company has historically collected for the effluent, and the Company's application indicates that the revised rate would promote use of effluent in new as well as existing developments.

13. We find that the proposed tariff revision is not revenue neutral and, therefore, the proposed revision of the Company's effluent tariff is more appropriately considered in the context of a rate case.

14. VSFWC states that its rationale for selling effluent at less than the tariff rate is that Golf Course is the sole user of the effluent and the Company would likely to be left without a means to dispose of the effluent if Golf Course finds that pumping groundwater from its own wells is less costly than purchasing effluent.

15. The Company further states that it has no formal contingency plan for the disposal of effluent in the event that Golf Course refuses to take further deliveries of effluent.

16. The Company has indicated that there is the potential that the Golf Course could shut down for economic reasons. Should Golf Course cease to accept future deliveries, the Company has neither other purchasers for the effluent nor the ability to either store or discharge effluent. The inability of the Company to dispose of its effluent, should the Golf Course fail to take delivery would create a danger to public health and safety.

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17. VSFWC has indicated that it is reviewing a number of possible alternatives including: (1) discharge effluent through the use of vadose-zone wells, (2) purchase land for percolation/evaporation ponds, and (3) secure additional effluent customers.

18. At this time, the Company has not developed cost estimates or time estimates for implementation of any of these possible alternatives for effluent disposal.

19. We find that it is in the public interest for VSFWC to formulate an alternative disposal plan for the system's effluent.

20. Until a contingency plan is developed and made operational, the Company proposes to continue to accept $0.23 per 1,000 gallons from Golf Course.

21. Staff concludes that Golf Course's potential to discontinue future receipt of effluent deliveries coupled with the Company's lack of an operational alternative effluent disposal plan, constitutes a threat to the public's health and safety. Such circumstances require prompt Commission action to promote the public health and welfare.

22. We find that the Company's potential inability to dispose of its effluent, coupled with the Company's lack of an operational alternative effluent disposal plan, presents a threat to the public health and safety that constitutes an emergency.[1]

23. Given that Golf Course is the only existing means for the Company to dispose of effluent, we find that retaining this effluent customer is essential and that revising the effluent sales rate to $0.23 per 1,000 gallons on an emergency basis is appropriate to provide VSFWC time to develop and implement a long-term plan for the disposal of effluent.

24. Staff recommends approval of a $0.23 per 1,000 gallons emergency rate for the disposal of effluent subject to the following conditions:

a. That VSFWC post a $100,000 bond. The bond should remain a requirement until an alternative effluent disposal option is operational and approved by the Arizona Department of Environmental Quality ("ADEQ").

b. That the Company file, as a compliance item in this Docket, by December 31, 2010, documentation showing that ADEQ has approved an alternative effluent disposal

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[1] VSFWC's "Exceptions to Proposed Order" (page 2, lines 7-10) dated February 26, 2010, attributed public health and safety concerns to its acceptance of payment for effluent at less than the authorized tariff.

plan. If documentation from ADEQ is not submitted by December 31, 2010, the above bond shall be increased to $200,000.

c. That the Company file a rate case no later than March 31, 2011, using a 2010 test year.

d. That VSFWC file, as a compliance item in this Docket, within 30 days of the end of every quarter beginning with the quarter ending June 30, 2010, a Report of Effluent Sales showing: the amount of effluent sold in gallons for the quarter; the rate and amount invoiced; and the amount collected for effluent sales. This report should include, as an attachment, copies of the customer bills rendered and source documentation showing the payment amounts collected from those bills.

e. That VSFWC implement a management plan establishing controls intended to prevent future oversights that could result in compromises to its operations and to the public health and safety. Specifically, the plan should address any potential oversights that may be similar in nature, substance or significance to those that that allowed: (1) the absence of a viable contingency plan for effluent disposal; (2) delaying for years to inform the Commission regarding its long-term inability to collect properly billed tariff rates from the Golf Course; and (3) knowingly billing for effluent sales at less than the approved tariff rate.

f. That VSFWC be placed on notice that it should take all reasonable efforts to ensure compliance with all Commission rules and authorized tariffs.

25. We find that Staff's recommendations as set forth in Finding of Fact No. 24 are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. The Company is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§40-250 and 40-251.

2. The Commission has jurisdiction over the Company and of the subject matter of the application.

3. The Commission having reviewed the filing and Staff's Memorandum dated April 13, 2010, concludes that the Company's requested revision to its tariff should be considered in a rate application and the request should be denied.

4. The Golf Course's potential to discontinue future receipt of effluent deliveries coupled with the Company's lack of an operational alternative effluent disposal plan, constitutes an immediate threat to the public's health and safety rising to the level of an emergency.

ORDER

THEREFORE, IT IS ORDERED that the application by Verde Santa Fe Wastewater Company, request to reduce its authorized tariff for the commodity rate for effluent sales is denied.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company is granted an emergency rate for effluent sales of $0.23 per 1,000 gallons.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company post a $100,000 bond. The bond should remain a requirement until an alternative effluent disposal option is operational and approved by the Arizona Department of Environmental Quality.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company file, as a compliance item in this Docket, by December 31, 2010, documentation showing that Arizona Department of Environmental Quality has approved an alternative effluent disposal plan. If documentation from Arizona Department of Environmental Quality is not submitted by December 31, 2010, the above bond shall be increased to $200,000.

IT IS FURTHER ORDERED that the Verde Santa Fe Wastewater Company file a rate case no later than March 31, 2011, using a 2010 test year.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company file, as a compliance item in this Docket, within 30 days of the end of every quarter beginning with the quarter ending June 30, 2010, a Report of Effluent Sales showing: the amount of effluent sold in gallons for the quarter; the rate and amount invoiced; and the amount collected for effluent sales. This report shall include, as an attachment, copies of the customer bills rendered and source documentation showing the payment amounts collected from those bills.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company implement a management plan establishing controls intended to prevent future oversights that could result in compromises to its operations and to the public health and safety. Specifically, the plan shall address any potential oversights that may be similar in nature, substance or significance to those that that allowed: (1) the absence of a viable contingency plan for effluent disposal; (2) delaying for years to inform the Commission regarding its long-term inability to collect properly billed tariff

. . .

rates from the Golf Course; and (3) knowingly billing for effluent sales at less than the approved tariff rate.

IT IS FURTHER ORDERED that Verde Santa Fe Wastewater Company be placed on notice that it should take all reasonable efforts to ensure compliance with all Commission rules and authorized tariffs.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, Ernest G. Johnson, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _______day of ___________________ , 2010.

____
ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: ____________________________

DISSENT: ____________________________

SMO:GTM:lhm\RM

SERVICE LIST FOR: Verde Santa Fe Wastewater Company
DOCKET NO. SW-03437A-09-0943

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